

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-1212V

Filed: April 27, 2016

ALICIA SKINNER-SMITH,

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Petitioner

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v.

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Finding of Facts; Site of Vaccination;
Special Processing Unit ("SPU")

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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Richard Gage, Richard Gage, PC, Cheyenne, WY for petitioner.

Justine Elizabeth Walters, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON FACTS¹

On December 17, 2014, Alicia Skinner-Smith ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, §300aa-10, *et seq.*,² (the "Vaccine Act" or "Program"). The petition alleges that following the February 6, 2012 administration of her Tetanus, diphtheria, acellular pertussis ("Tdap") vaccination, petitioner suffered an "abscess, pain, and related injuries." Petition at 1, ¶4. The case was assigned to the Special Processing Unit ("SPU"). The issue currently before the undersigned is the site of petitioner's February 6, 2012 Tdap vaccination as the record contains conflicting evidence. After a review of the entire record the undersigned finds petitioner received her February 6, 2012 Tdap vaccination in the left dorsal gluteal muscle.

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

I. Procedural History

An initial status conference was held with the staff attorney managing this case on January 30, 2015. During the status conference, respondent's counsel indicated that a discrepancy exists in the record as to the anatomical location or site of petitioner's February 6, 2012 Tdap vaccination. Scheduling Order, dated Feb. 2, 2015. The undersigned notes that a contemporaneous record from Ocshner Medical Center ("OMC") indicates that petitioner received her vaccination in her left deltoid (Pet. Ex. 1 at 685), however in petitioner's subsequent treatment records she indicates the vaccination was administered in her left dorsal gluteal region (see *infra* at 3-4).

Thereafter, petitioner was ordered to file additional evidence regarding the site of her vaccination. See Scheduling Orders, dated Feb. 2, 2015, March 18, 2015, and April 23, 2015. On March 26, 2015, petitioner's counsel filed a Memorandum Regarding Vaccination Records ("Petitioner's Memo" or "Pet. Memo") and a supplemental affidavit from petitioner. In addition to providing numerous citations in subsequent treatment records noting her vaccination was administered in her left gluteal region, petitioner pointed to a contemporaneous record from OMC documenting her vaccination site as "(L)DG." Pet. Memo, filed March 26, 2015, at 1-2. However, petitioner was unable provide any additional evidence from OMC regarding the site of her vaccination, or the meaning of "(L)DG," even after attempting to obtain the information from OMC via a subpoena. See Scheduling Order, dated July 22, 2015; Order, dated Aug. 4, 2015; Status Report, filed Sept. 15, 2015; Status Report, filed Sept. 28, 2015; Status Report, filed Nov. 5, 2015.

The undersigned convened a status conference on November 5, 2015 and made the preliminary finding that petitioner's February 6, 2012 Tdap vaccination was administered in her left buttock based on the record as a whole and in particular the citations referenced in Petitioner's Memo. Scheduling Order, dated Nov. 9, 2015, at 2. Subsequently respondent contacted the court and requested an opportunity to obtain additional information from OMC before the undersigned issued her Fact Ruling. *Id.* Thereafter, respondent served a subpoena upon OMC and obtained additional information from the vaccine administrator. Resp. Ex. B, filed Feb. 16, 2016. OMC consulted with the author of the note, Mary Ann Le, R.N., indicating that petitioner received her vaccination at "(L)DG." Ms. Le stated (L)DG is an abbreviation for "left dorsal gluteal (muscle)."³ Resp. Ex. B at 1. Ms. Le "does not recall the treatment in question, [and] cannot say [for certain] in what part of the patient's body the vaccine was administered." *Id.* at 2.

Respondent also filed a response to the undersigned's preliminary findings of fact on February 16, 2016 indicating that the issue of where petitioner received her February 6, 2012 vaccination is now ripe for the undersigned's ruling. Resp. Response, filed Feb. 16, 2016, at 5. Petitioner filed no reply to respondent's response.

³ Ms. Le indicated that "in light of other conflicting information in Ms. Skinner-Smith's chart as to the administration route and due to the time which has elapsed since the relevant treatment, she is not certain what she meant in this particular instance." Resp. Ex. B at 1.

II. Finding of Fact

Based upon the record as a whole, and specifically the evidence described below, the undersigned finds that the site of petitioner's February 6, 2012 Tdap vaccination was her left dorsal gluteal muscle.

The undersigned finds petitioner's medical history regarding the site of her vaccination is consistent with the following chronology and citations provided in her medical records as set forth in Petitioner's Memo:

February 6, 2012. Ex. 1 pg. 843. Site given (L)DG.

February 6, 2012. Ex. 1 pg. 685. Left deltoid.

February 9, 2012. Ex. 1 pg. 441. "She complains of left hip pain and lower back pain after getting a tetanus injection in her left hip."

February 13, 2012. Ex. 1 pg. 439. "Left buttock abscess/ cellulitis that began 1 day after receiving tetanus shot."

February 24, 2012. Ex. 1 pg. 661. "46 y.o. female had tetanus shot in left buttock 2/6/12 and then developed an abscess at the site."

February 27, 2012. Ex. 1 pg. 675. "Patient received a tetanus shot in her left buttock area on 2/6."

February 27, 2012. Ex. 1 pg. 680. "Pt with hx of getting a t-dap on Feb 6th because of a burn. It was given in the left buttock region."

June 27, 2012. Ex. 1 pg. 415. "Impression: Arthralgias. Symptoms began after tetanus shot which was associated with cellulitis of buttocks."

August 23, 2012. Ex. 1 pg. 22. "Patient complains of intermittent pain in her left buttocks, leg and foot since getting a tetanus injection."

September 21, 2012. Ex. 6 pg. 1. "She dated the beginning of symptoms to be associated with an injection of Tetanus administered in the buttock of the left leg."

September 21, 2012. Ex. 6 pg. 6. "She presents with leg pain and swelling in legs after being given a tetanus injection in buttocks instead of deltoid..."

February 7, 2013. Ex. 3 pg. 11. "Visit for: Last year (feb.6, 2012) - see record from Ochsner: received T-dap to left buttocks due to er visit with burn to rt upper ext."

July 15, 2013. Ex. 1 pg. 168. "Last February she reports having a tetanus shot to the left gluteal region..."

Pet. Memo at 1-2.

The undersigned further finds that "(L)DG" as referenced in petitioner's Exhibit 1 at 843, means the "left dorsal gluteal (muscle)." Resp. Ex. B at 1.

III. Discussion

After a complete review of the entire record, and in particular the evidence cited above, the undersigned finds that preponderant evidence supports a finding that the site of petitioner's February 6, 2012 Tdap vaccination was her left dorsal gluteal muscle. The undersigned makes this finding notwithstanding the single notation that petitioner received the vaccine in her left deltoid (Ex. 1 at 685) and Ms. Le's inability to say definitively in what part of the body petitioner's vaccine was administered.

IV. Conclusion

For all these reasons, the undersigned finds that the preponderance of the evidence demonstrates Alicia Skinner-Smith's February 6, 2012 Tdap vaccination was administered in her left dorsal gluteal muscle.

Respondent shall file her Rule 4(c) Report by no later than June 13, 2016.

IT IS SO ORDERED.

s/ Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master